

## **Chapter 12: Procedures for Providing Reasonable Accommodation for Individuals with Disabilities**

This document provides the policy and procedures of the National Indian Gaming Commission (“NIGC”) for reasonable accommodations for individuals with disabilities. It establishes the requirements and instructions by which NIGC employees and decision makers will act on requests for reasonable accommodation from employees or applicants for employment.

The NIGC is authorized to promulgate these procedures based on Section 501 of the Rehabilitation Act of 1973, *as amended* (29 U.S.C. § 791), U.S. Equal Employment Opportunity Commission (“EEOC”) regulations at 29 CFR Part 1614 (Federal Sector Equal Employment Opportunity), EEOC Management Directive 715, and Executive Order 13164.

### **Section 1. POLICY**

It is the NIGC’s policy to provide reasonable accommodation for the known physical or mental limitations of a qualified individual (employee or applicant) with a disability unless the accommodation would impose an undue hardship on the NIGC. This policy and the foregoing procedures apply to all employees of the NIGC and to all applicants for employment with the NIGC who have a disability, as defined below.

### **Section 2. DEFINITIONS**

- *Reasonable accommodation* is generally a change or adjustment in the work environment or in the way things are customarily done that would enable an individual with a disability to enjoy equal employment opportunities. There are three categories of reasonable accommodation:
  - (1) modifications or adjustments to a job application process to permit an individual with a disability to be considered for a job;
  - (2) modifications or adjustments necessary to enable a qualified individual with a disability to perform the essential functions of the job; or
  - (3) modifications or adjustments that enable employees with disabilities to enjoy equal benefits and privileges of employment.
- *Individual with a disability* is an individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment.
- *Physical or mental impairment* is any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, cardiovascular, reproductive, digestive, respiratory (including speech organs), genitor-urinary, hemic and lymphatic, skin, and endocrine, or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

- *Major life activities* are functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
- *Has a record of such an impairment* means having a history of, or being classified or misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
- *Regarded as having such an impairment* means having a physical or mental impairment that does not substantially limit major life activities, but is treated by an employer as constituting such a limitation; has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of others toward such an impairment; or, has none of the impairments defined above but is treated by an employer as having such a limitation.
- *Qualified individual with a disability* is an individual who satisfies the skill, experience, education and other job-related requirements of the employment position the individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.
- *Essential functions of a position* are the fundamental job duties of the position. A function may be “essential” if, among other things, the position exists to perform that function, there are a limited number of employees available among whom the performance of that job function can be distributed, or the function is highly specialized such that the incumbent in the position is hired based on his/her expertise or ability to perform that function.
- *Undue hardship* means, with respect to an accommodation, significant difficulty or expense incurred by the agency to accomplish it. In such a case, that particular accommodation does not have to be provided. Determination of undue hardship is always made on a case-by-case basis, considering such factors that include the nature and cost of the accommodation needed and the impact of the accommodation on the operation of the agency. Overall resources of the NIGC will be taken into consideration.
- *Request for reasonable accommodation* is a verbal (oral) or written statement that an individual needs an adjustment or change in the work environment or in the way things are customarily done to enable an individual with a disability to enjoy equal employment opportunities. Additional information, as appropriate, may be obtained through the interactive process which follows the request.

### **Section 3. REQUESTING REASONABLE ACCOMMODATION**

- A. Initiating a Request for Reasonable Accommodation. When an employee or applicant makes a request for reasonable accommodation, either on his/her own behalf, or through a family member, health professional, or other representative acting on the individual’s behalf, the following requirements apply:

- (1) For an **employee**, the **request may be made verbally (orally) or in writing** to his/her supervisor, a supervisor in his/her immediate chain of command, the NIGC EEO Counselor or the NIGC Personnel Office. The request should indicate that the employee needs an adjustment or change at work for a reason related to a medical condition.
- (2) For an **applicant** for employment, the **request may be made verbally (orally) or in writing** to the NIGC employee with whom he/she has had contact, the application point of contact at the location of the office to which the applicant is applying, or the NIGC Personnel Office in Washington, DC. The request should indicate that the applicant needs an adjustment or change in the application process for a reason related to a medical condition.
- (3) **A verbal (oral) request for accommodation is acceptable when made.** For record-keeping purposes only, the employee or applicant should also submit the request in writing using the Confirmation of Request for Reasonable Accommodation form (Attachment A). The request for accommodation will also be documented by the individual receiving the request. The NIGC must not wait until a written request or other recordkeeping form is received before processing a request for reasonable accommodation.
- (4) **Particular words are not required** when requesting a reasonable accommodation. For example, the individual need not use the words “disability” or “reasonable accommodation” when requesting reasonable accommodation.
- (5) If a requested accommodation is approved and is of the type that will be needed on a repeated basis (*e.g.*, sign language interpreter), the individual does not have to submit an additional request each time the accommodation is needed. In such cases, the NIGC must provide the accommodation on an as needed basis. The EEOC has issued federal sector decisions holding that in some circumstances where an individual has a recurring, predictable need for accommodation, the agency may be obligated to provide the accommodation as needed, whether or not the individual has requested it.
- (6) **All requests for and provision of reasonable accommodations must be kept confidential.** All medical information provided by an individual with regard to a request for reasonable accommodation must also be kept confidential, except as provided in Section 3, D below. The NIGC must not disclose that an employee is receiving a reasonable accommodation because this usually amounts to a disclosure that the individual has a disability.

B. Timelines for Acting on Requests for Reasonable Accommodation.

- (1) **Employee Request Without Need of Medical Documentation:** Upon receipt of an employee's request for reasonable accommodation, when medical documentation is not required, the official who received the request will forward it to the employee's supervisor and the Accommodation Coordinator no more than **two (2) business days after its actual receipt**. Upon receipt of the request, the supervisor must begin processing the request and engage in an interactive process with the employee with regard to the request. The supervisor, and other deciding official(s) (if any), must review the request and issue a written decision to the employee within **ten (10) business days** from the date the supervisor received the request, absent extenuating circumstances. The written decision, either an Approval of Request for Reasonable Accommodation (Attachment B) or Denial of Request for Reasonable Accommodation (Attachment C), shall state whether the proposed accommodation will be made and include a specific description of the actions to be taken, if any. After the issuance of a written decision to grant an accommodation, the NIGC must provide the accommodation within **twenty (20) business days** from the date the request was received by the supervisor, absent extenuating circumstances as described below. In any event, the supervisor must keep the employee informed on delivery of the accommodation. Notwithstanding the timeframes prescribed in these procedures, some accommodations can be provided in less time and every effort must be made to do so. **Failure promptly to respond to a request for reasonable accommodation may constitute a violation of the Rehabilitation Act.**
- (2) **Applicant Request Without Need of Medical Documentation:** Upon receipt of an applicant's request for reasonable accommodation, when medical documentation is not required, the official who received the request will forward it to the supervisor who has the vacant position for which the individual has applied and forward it to the Accommodation Coordinator no more than **two (2) business days after its actual receipt**. Upon receipt of the request, the supervisor must begin processing the request and engage in an interactive process with the applicant with regard to the request. The supervisor, and other deciding official(s) (if any), must review the request and issue a written decision to the applicant within **ten (10) business days** from the date the supervisor received the request, absent extenuating circumstances. The written decision, either an Approval of Request for Reasonable Accommodation (Attachment B) or Denial of Request for Reasonable Accommodation (Attachment C), shall state whether the proposed accommodation will be made and include a specific description of the actions to be taken, if any. After the issuance of a written decision to grant an accommodation, the NIGC must provide the accommodation within **twenty (20) business days** from the date the request was received by the supervisor, absent extenuating circumstances as described below. In any event, the supervisor must keep the applicant informed on delivery of the accommodation. Notwithstanding the timeframes prescribed in these

procedures, some accommodations can be provided in less time and every effort must be made to do so. **Failure promptly to respond to a request for reasonable accommodation may constitute a violation of the Rehabilitation Act.**

- (3) Request with Medical Documentation Required: If medical documentation is required from an applicant or employee requesting a reasonable accommodation, the written decision must be issued to the applicant or employee within **ten (10) business days** from the date the medical documentation was actually received by the supervisor, absent extenuating circumstances. The written decision, either an Approval of Request for Reasonable Accommodation or Denial of Request for Reasonable Accommodation, shall state whether the proposed accommodation will be made and include a specific description of the actions to be taken, if any. After the issuance of a written decision to grant an accommodation, the NIGC must provide the accommodation within **twenty (20) business days** from the date the request was received by the supervisor, absent extenuating circumstances as described below. In any event, the supervisor must keep the employee or applicant informed on delivery of the accommodation. Notwithstanding the timeframes prescribed in these procedures, some accommodations can be provided in less time and every effort must be made to do so. **Failure promptly to respond to a request for reasonable accommodation may constitute a violation of the Rehabilitation Act.**
- (4) Extenuating Circumstances: Extenuating circumstances may delay the provision of reasonable accommodation within the stated timelines, although every attempt must be made to process requests for reasonable accommodation in as short of a time as possible. Extenuating circumstances are factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation. These can include, but are not limited to, situations in which equipment is on back order, the vendor typically used by the organization has unexpectedly gone out of business, or the accommodation requires restructuring facilities.
- (5) If there is either a delay (beyond the timelines prescribed in these procedures) in processing a request for reasonable accommodation, or after a request is approved, a delay in delivering the accommodation, the supervisor must notify the employee or applicant of the reason for the delay. And, to the extent possible, the supervisor shall keep the employee or applicant informed of the date on which the request is expected to be completed. In the event of such a delay, the supervisor must investigate whether there are temporary measures that could be taken to assist the individual with a disability.
- (6) When necessary, expedited processing of a request for an accommodation should occur. Expedited processing might be necessary when the accommodation is needed to apply for a position or to participate in a specific

activity that is scheduled to occur shortly. **Failure to respond promptly to a request for reasonable accommodation, especially in those situations where the accommodation could be provided in an expedited manner, may result in a violation of the Rehabilitation Act.**

C. Processing Requests for Reasonable Accommodation. Every attempt must be made to process requests for reasonable accommodation in as short of a time as possible.

- (1) When possible, direct (first-line) supervisors may approve requests for reasonable accommodation but must follow the timelines and other requirements and procedures prescribed herein.
- (2) Whenever requests cannot be decided by the direct supervisor due to the nature of the request (e.g. accommodation requires the purchase of additional computer programs or equipment), the request will be referred to other deciding official(s) for consultation and consideration. The other deciding official(s) may include the NIGC Chairman, NIGC Commissioner, Chief Administrative Officer, General Counsel and the Chief of Staff, as appropriate. The other deciding official(s) and the supervisor who received the request should work together to consider and process the request. The timelines prescribed in Section 3, B shall apply even if the request is referred to other deciding official(s). Every attempt must be made to process requests for reasonable accommodation in as short a time as possible. **Failure to respond promptly to a request for reasonable accommodation, especially in those situations where the accommodation could be provided in an expedited manner, may result in a violation of the Rehabilitation Act.**
- (3) When a request is referred from the supervisor to other deciding official(s), the supervisor shall serve as the liaison between the individual requesting the accommodation and the other deciding official(s).
- (4) Interactive Process: In processing a request, the supervisor must confer with the employee or applicant regarding the request and the potential accommodation, especially when the specific limitation, problem, or barrier is unclear; when an effective accommodation is not obvious; or, when the parties are choosing between different possible reasonable accommodations.
- (5) The supervisor and other deciding official(s) responsible for making a decision on a request for accommodation will be identified as the deciding official(s) to the employee or applicant.
- (6) The supervisor and other deciding official(s) will consider the following in determining whether an accommodation can be provided:
  - (a) the employee's or applicant's specific disability and existing limitations;
  - (b) the essential duties of the particular job;

- (c) the work environment; and
- (d) whether the proposed accommodation would result in undue hardship for the agency.

- (7) A written decision, either an Approval of Request for Reasonable Accommodation (Attachment B) or Denial of Request for Reasonable Accommodation (Attachment C), must be provided to the individual requesting the accommodation in accordance with the timelines prescribed in Section 3, B. The written decision shall state whether the proposed accommodation will be made and include a specific description of the actions to be taken, if any. For further information on a denial of request for reasonable accommodation, see Section 3, F below.

D. Medical Information. The NIGC must not request medical documentation in support of every accommodation request, regardless of circumstances.

- (1) The supervisor, or other deciding official(s) (if any), may request medical information sufficient to substantiate that the individual has a medical condition or impairment and needs reasonable accommodation, but **must not request medical documentation when:**
  - (a) the medical condition or impairment and need for accommodation are obvious or otherwise already known; or
  - (b) the individual has already provided sufficient information to document the existence of the medical condition or impairment and the individual's functional limitations.
- (2) When the standards for requesting medical information have been met, as identified above, the supervisor, or other deciding official(s), may request information or documentation regarding:
  - (a) the nature, severity, and duration of the individual's impairment;
  - (b) the activities that the impairment limits;
  - (c) the extent to which the impairment limits the individual's ability to perform the activities; or
  - (d) why the individual requires reasonable accommodation or the particular reasonable accommodation requested, as well as how the reasonable accommodation will assist the individual to apply for a job, perform the essential functions of the job, or enjoy a benefit of the workforce.
- (3) Relevant supplemental medical information may only be requested if the initial medical documentation submitted did not clearly explain the nature of the disability, or the need for the reasonable accommodation, or did not otherwise clarify how the requested accommodation will assist the employee to perform the essential functions of the job or to enjoy the benefits and privileges of the workplace, or, in the case of an applicant, assist with the

application process. If relevant supplemental medical information is requested, the supervisor must explain to the employee or applicant why the documentation already submitted was insufficient and identify the medical documentation still needed.

- (4) When the supervisor, or other deciding official(s), is entitled to request medical information under the standards set forth above, the submitted medical information may be reviewed by a healthcare professional selected by the NIGC, who will provide an advisory opinion in order to assist in making a decision on the request. The review by a healthcare professional will be at the expense of the NIGC.
- (5) If the employee or applicant is unable to provide sufficient information in support of the request, the supervisor, or other deciding official(s), may request that the individual be examined by a healthcare professional of the NIGC's choice and at the NIGC's expense. Any such medical examination must be limited to determining the existence of a disability or the functional limitations that require an accommodation. Where a medical examination is warranted, the supervisor must explain to the individual that failure to agree to take the medical examination could result in a denial of the accommodation.
- (6) Pursuant to the Privacy Act, medical documentation submitted in support of any request for reasonable accommodation will be kept in a sealed envelope marked as "Confidential" and maintained in secure storage by the Accommodation Coordinator, separate from Official Personnel Files. Disclosure of medical information is prohibited except in certain limited situations, which do not include disclosure to coworkers.
- (7) Individuals who have access to medical information necessary to make a decision about whether to grant a requested accommodation may not disclose this information except as follows:
  - (a) supervisors who need to know may be told about necessary restrictions on the work or duties of the employee and about the necessary accommodation(s);
  - (b) first aid and safety personnel may be told if the medical condition or impairment might require emergency treatment;
  - (c) government officials may be given information necessary to investigate NIGC's compliance with the Rehabilitation Act;
  - (d) information may in certain circumstances be disclosed to workers' compensation offices or insurance carriers; and
  - (e) EEO officials may be given the information to maintain records, evaluate, and report on the NIGC's performance.

**When medical information is disclosed in any of the preceding circumstances, NIGC officials must inform those individuals to whom**



**the information is disclosed about the confidentiality requirements attached to such information.**

- (8) Supervisors, or other deciding official(s) (if any), requesting medical information must not request information that is not relevant to the accommodation request nor request more information than is necessary to determine if the requester is an individual with a disability and needs accommodation.
- (9) It is the responsibility of the employee or applicant requesting reasonable accommodation to provide appropriate medical information when circumstances warrant the need for such information. The supervisor or deciding official must explain to the individual that failure to provide the necessary information after the need for such information has been clearly established could result in a denial of the accommodation.

E. Reassignment. Under the Rehabilitation Act, reassignment to a vacant position may be an appropriate and reasonable accommodation that must be provided, absent undue hardship, to an employee who, because of a disability, can no longer perform the essential functions of the position the employee holds, with or without reasonable accommodation. Reassignment will only be considered if no other reasonable accommodation is available. The NIGC is not required by law to create new positions for individuals or to move employees from their jobs in order to create a vacancy, and reassignment may only be made to a vacant position. Reassignment is only available to employees.

- (1) When it appears that no other reasonable accommodation will enable the employee to perform the essential functions of the employee's position, the supervisor and other deciding official(s) must consider reassignment of the employee to a vacant funded position for which the employee is qualified. The supervisor and Accommodation Coordinator should attempt to identify positions to which the employee may be reassigned. If any position(s) is identified, a determination will be made as to whether the employee needs an accommodation to perform in that position.
- (2) In identifying a vacant position for reassignment, the NIGC will first focus on positions which are equivalent to the employee's job in terms of pay, status, and other relevant factors. If there is no vacant equivalent position, the NIGC may consider vacant lower level positions for which the individual is qualified. Reassignment may be made to a vacant position outside of the employee's commuting area if the employee is willing to relocate. As with other transfers not required by management, the NIGC will not pay for the employee's relocation costs.

F. Denial of Request for Reasonable Accommodation.

- (1) A decision denying a request for reasonable accommodation **must be in writing and the written decision must be provided to the individual requesting the accommodation** using the Denial of Request for Reasonable Accommodation form (Attachment C).
- (2) The denial of request for reasonable accommodation must specifically explain the reasons why the request was denied. The denial must identify the supervisor and other deciding official(s) who made the decision denying the accommodation. The denial must also inform the individual of his/her right to seek reconsideration of the decision, the informal dispute resolution process, and right to file an EEO complaint of discrimination. In addition, the individual may have rights to pursue a claim with the Merit Systems Protection Board (“MSPB”) or via other grievance procedures.
- (3) A decision denying the proposed accommodation but offering an alternate accommodation in its place, must explain both the reason for the denial of the requested accommodation and the reason that the alternate accommodation will be effective.
- (4) **A decision to deny a request for reasonable accommodation must be made by: 1) the supervisor; and 2) the Chief of Staff or the General Counsel. The decision may also include other deciding officials.**

#### **Section 4. RECONSIDERATION**

- A. Individuals with disabilities may request prompt reconsideration of a denial of reasonable accommodation. The request for reconsideration should be made to the supervisor or Accommodation Coordinator within **ten (10) business days of actual receipt of the written denial**. The individual may present additional information in support of the request.
- B. The officials who denied the request for reasonable accommodation must review the request for reconsideration and respond to individual making the reconsideration request within **twenty (20) business days of actual receipt of the request for reconsideration**. If the original decision denying the request for reasonable accommodation is reversed, the timelines and procedures for providing the reasonable accommodation prescribed in Section 3, B apply.
- C. Upon receipt of a request for reconsideration, the officials who denied the request for reasonable accommodation and the Accommodation Coordinator must be notified of the request for reconsideration in order to respond to the request within the prescribed timeline.
- D. Pursuing the reconsideration procedures identified above or participating in informal dispute resolution, does not affect the time limits for initiating statutory claims. An individual’s participation in informal dispute resolution does not satisfy

the requirements for bringing a claim under EEO, MSPB, or negotiated grievance procedures.

## **Section 5. INFORMAL DISPUTE RESOLUTION**

- A. Individuals with disabilities (applicants or employees) may request informal dispute resolution of a denial of reasonable accommodation, in addition to requesting a reconsideration of a denial as outlined in Section 4 of these procedures. A request for informal dispute resolution does not diminish an individual's right to pursue his or her claim through the EEO process by filing a formal complaint and does not affect the time limits for initiating an EEO complaint. Participation in the informal dispute resolution process by an individual is strictly voluntary.
- B. Informal dispute resolution is intended to address disputes within a reasonable time frame and informally through the use of mediators to facilitate resolution. The ultimate goal of the mediation process is resolution of the issue.
- C. Request for Informal Dispute Resolution. An individual should request informal dispute resolution of a denial of reasonable accommodation within **ten (10) business days** of actual written receipt of the denial. The request for informal dispute resolution should be made to the supervisor or Accommodation Coordinator. The individual may present additional information in support of this request.
- D. Appointment of a Mediator. If an individual requests informal dispute resolution, the NIGC shall appoint a mediator within **ten (10) business days** of receipt of the request, absent extenuating circumstances.
  - (1) The mediator must be an impartial and neutral third party, who has no decision making authority at the NIGC.
  - (2) The individual and the NIGC deciding officials who denied the individual's request for accommodation must both agree with the selection of the mediator.
  - (3) If costs are required for the appointment of a mediator or for the mediation process, these costs will be paid by the NIGC.
  - (4) Mediators may be appointed from other federal government agencies, the Interagency Sharing Neutrals Program or from outside of the federal government.
- E. Mediation. The purpose of mediation is to encourage resolution of the dispute. The mediator facilitates open discussion between the parties of the dispute and assists with negotiating a mutually agreeable solution. The mediator has no authority to impose a decision or resolution on the parties.
  - (1) Once a mediator is appointed, the Accommodation Coordinator shall provide the mediator with information regarding the dispute, including the identity of the individual; the identities of the NIGC deciding officials; the general nature

- of the dispute; copies of the relevant Confirmation of Request for Reasonable Accommodation and Denial of Request for Reasonable Accommodation; and other information as requested by the mediator.
- (2) The Accommodation Coordinator shall contact the NIGC deciding officials and the individual to schedule mutually acceptable date(s) for the mediation with all parties.
  - (3) The Accommodation Coordinator shall reserve a neutral location for the mediation.
  - (4) NIGC deciding officials and appropriate supervisors are required actively to participate in the mediation process if the process is selected by the individual.
  - (5) If mediation is successful, a binding settlement agreement between the parties will be signed resolving the dispute. The NIGC Chairman or Commissioner may sign the settlement agreement.
  - (6) If mediation is unsuccessful, the mediator will report the outcome to the Accommodation Coordinator and the informal dispute resolution process will be closed.
  - (7) All information disclosed during mediation (informal dispute resolution) is confidential.
  - (8) An individual is entitled to be represented by legal counsel, at his or her expense, during the mediation process.

## **Section 6. RESPONSIBILITIES**

- A. Supervisors and other deciding officials are responsible for ensuring that selections of qualified individuals with disabilities are made in a non-discriminatory manner and that the procedures for the reasonable accommodation of individuals with disabilities are implemented and followed.
- B. Supervisors and other deciding officials may not retaliate against an individual who has requested a reasonable accommodation.
- C. Disclosure of an individual's medical information is prohibited except in certain limited situations, which do not include disclosure to coworkers. For further guidance on limited situations allowing for disclosure, see Section 3, D (7) above. For further guidance on ways to respond to other employees' inquiries without violating confidentiality, generally see *EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act* (revised October 17, 2002), Question 42.
- D. The Accommodation Coordinator has administrative responsibility for the reasonable accommodation process, including, but not limited to:
  - (1) maintaining the records of individuals' requests for reasonable accommodation (e.g., Request for Reasonable Accommodation forms, Approval of Request for Reasonable Accommodation forms, etc.)

- (2) maintaining medical information regarding requests for accommodation sealed and in secure storage;
  - (3) keeping track of timelines and other procedures regarding reasonable accommodation to assure that these requirements are being met;
  - (4) maintaining copies of the Procedures for Providing Reasonable Accommodation for Individuals with Disabilities and assuring that the Procedures are available to employees or applicants upon request;
  - (5) maintaining copies of Attachments A - D for use in processing requests for reasonable accommodation.
  - (6) Additional duties as determined by the NIGC.
- E. The Personnel Specialist and Accommodation Coordinator will ensure that every job announcement for vacant or new positions at the NIGC includes the following statement:
- The National Indian Gaming Commission (NIGC) is an Equal Opportunity/Reasonable Accommodation Employer. Except where otherwise provided by law, there will be no discrimination based on sex, sexual orientation, color, race, religion, national origin, politics, marital status, disability, age, status as a parent, membership or nonmembership in an employee organization, or personal favoritism. The NIGC provides reasonable accommodation to applicants with disabilities where appropriate. If you need a reasonable accommodation for any part of the application or hiring process, please contact the NIGC's Personnel Specialist at 202-632-7003 (this is not a toll free call). Determinations for requests for reasonable accommodation will be made on a case-by-case basis.
- F. Any requests for reasonable accommodation granted by the NIGC prior to the approval of these procedures remain in effect unless the circumstances for granting the accommodation have changed.

**Section 7. GUIDELINES FOR ASSESSING AND PROVIDING REASONABLE ACCOMMODATION**

- A. Overview. Accommodations are determined on a case-by-case basis, taking into consideration the needs of the applicant or employee, his/her specific disability, the essential duties of the position in question, the work environment, and the reasonableness of the proposed accommodation. In all cases where an accommodation request is not approved, the qualified individual with a disability must be consulted before an alternative accommodation is provided.
- (1) An accommodation must be work-related and not for personal needs use. The NIGC does not have to provide as reasonable accommodations personal use items needed in accomplishing daily activities both on and off the job. Thus, the NIGC is not required to provide an employee with a prosthetic limb, a wheelchair, eyeglasses, hearing aids, or similar devices if they are also needed

off the job. Furthermore, the NIGC is not required to provide personal use amenities, such as a hot pot, if those items are not provided to employees without disabilities. However, items that might otherwise be considered personal may be required as reasonable accommodations where they are specifically designed or required to meet job-related rather than personal needs.

- (2) The responsibility to provide reasonable accommodation does not end when the individual with a disability is placed in a position. The accommodation must also be considered in training, merit staffing processes, and any other aspect of employment that would be adversely affected if the NIGC failed to provide reasonable accommodation.

B. Reasonable Accommodation Assessment.

- (1) The first step in determining an appropriate accommodation after a request is received from a qualified individual with a disability is to review the accommodation requested to determine if it is reasonable. The reasonableness of the proposed accommodation means that the accommodation “seems reasonable on its face, *i.e.*, ordinarily or in the run of cases,” “plausible,” or “feasible,” as defined by the Supreme Court in *U.S. Airways v. Barnett*, 535 U.S. 391 (2002). Furthermore, an accommodation must also be effective. An accommodation is effective if it meets the needs of the individual in question. In the context of job performance, this means that the reasonable accommodation enables the individual to perform the essential functions of the position. Similarly, a reasonable accommodation enables an applicant with a disability to have an equal opportunity to participate in the application process and be considered for the job. A reasonable accommodation allows an employee with a disability an equal opportunity to enjoy the benefits and privileges of employment that employees without disabilities enjoy. If it is determined that the requested accommodation is not “reasonable,” the supervisor or manager who made the determination must consult with the employee with the disability and ask for suggestions as to what alternative accommodations would enable him/her to perform the essential functions of the job.
- (2) When providing auxiliary aids (*e.g.*, assistive technology, ergonomic equipment, TTY, interpreter), the supervisor and other deciding official(s) should give preference to that requested by the individual with the disability, unless that which was requested constitutes an undue hardship.
- (3) Accommodations need to be made to the known physical or mental limitations. The NIGC is not obligated to make an accommodation for a job interview, or for an existing job, until the applicant or employee has communicated his/her needs. Officials involved in the application process should ensure that vacancy announcements explain what the application

process involves and indicate to whom interested parties should make requests for reasonable accommodation if needed for the application process.

- (4) Determination of undue hardship is always made on a case-by-case basis, considering such factors that include the nature and cost of the accommodation needed and the impact of the accommodation on the operation of the agency. The overall resources and options available to the NIGC will be taken into consideration in determining whether a requested reasonable accommodation poses an undue hardship on the NIGC, not just on the budget or resources of an individual office or division.
- (5) The following are some factors that may be considered in determining whether an employee's or applicant's requested accommodation would impose undue hardship.
  - (a) The overall size of the program with respect to the number of employees, number and type of facilities, and size of budget.
  - (b) The type of operation, including composition and structure of the workforce.
  - (c) The nature and cost of the accommodation.

C. EEOC Resource Materials.

The EEOC has provided helpful resource materials on its website ([www.eeoc.gov](http://www.eeoc.gov)) for use by employees with disabilities, as well as agency officials. These materials include, but are not limited to, *EEOC Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans With Disabilities Act* (July 27, 2000), and *EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act* (revised October 17, 2002). Both guides address frequently asked questions regarding provision of reasonable accommodation and related issues, including when and what type of medical documentation may be solicited by an agency in support of an accommodation request, the confidentiality protections applicable to accommodation requests and medical information, and the circumstances in which undue delay in providing reasonable accommodation may violate the Rehabilitation Act. These documents can serve as valuable desk references for all supervisors, managers, and others who may be responsible for processing accommodation requests.

**Section 8. MEANS OF REASONABLE ACCOMMODATIONS**

Examples of the kinds of actions that may constitute reasonable accommodation are listed below. Reasonable accommodation may include, but shall not be limited to the following:

- A. Making facilities readily accessible to and usable by a person with a disability.

- B. Job restructuring, including part-time or modified work schedules.
- C. Acquisition or modification of equipment or devices.
- D. Appropriate adjustment or modification of examinations.
- E. Provision of readers and interpreters.
- F. Accommodations for meetings, conferences, training and seminars.
- G. Reassignment.

In addition, Attachment D (below) contains a non-exhaustive list of resources that individuals with disabilities and agency decision makers can consult to identify and evaluate additional possible accommodations.

## **Section 9. INFORMATION TRACKING AND REPORTING**

- A. The Accommodation Coordinator must complete the Reasonable Accommodation Information Tracking and Reporting Form (Attachment D) within ten (10) business days of a decision approving or denying a reasonable accommodation. The Accommodation Coordinator should attach to the form copies of all information he/she received as part of processing the request. Any medical information should be maintained as consistent with these procedures.
- B. The Accommodation Coordinator will maintain these records for the length of the employee's tenure with NIGC and for three (3) years thereafter or until all potential appeals are concluded, whichever is longer.
- C. The Accommodation Coordinator will prepare an annual report concerning requests for reasonable accommodation by December 31st of each year and send the report to the EEOC. The report will contain the following information, presented in aggregate:
  - (1) the number of reasonable accommodations, by type, that have been requested in the application process and whether those requests have been granted or denied;
  - (2) the jobs (occupational series, grade level, and office) for which reasonable accommodations have been requested;
  - (3) the types of reasonable accommodations that have been requested for each of those jobs;
  - (4) the number of reasonable accommodations, by type, for each job that have been approved, and the number of accommodations, by type, that have been denied;



- (5) the number of requests for reasonable accommodations, by type, that relate to the benefits or privileges of employment, and whether those requests have been granted or denied;
  - (6) the reasons for denial of requests for reasonable accommodation;
  - (7) the amount of time taken to process each request for reasonable accommodation; and
  - (8) the sources of technical assistance that have been consulted in trying to identify possible reasonable accommodations.
- D. In addition, the report will provide a qualitative assessment of the NIGC's reasonable accommodation program, including any recommendations for program improvement or changes in the reasonable accommodation policies and procedures.
- E. The NIGC shall retain for at least three (3) years, and be able to provide to the U.S. Equal Employment Opportunity Commission, the annual report and information or any cumulative records used to prepare said annual report that tracks NIGC's performance with regard to reasonable accommodation. Tracking performance over a three-year period is critical to enable an agency to assess whether it has adequately processed and provided accommodations.

**Adopted: 11/05/09**

**Supersedes the "Procedures for Providing Reasonable Accommodation for Individuals with Disabilities" adopted by the Commission on 3/18/2008.**

(Attachment A)

**CONFIRMATION OF REQUEST FOR REASONABLE ACCOMMODATION**

\_\_\_\_\_  
**Applicant's or Employee's Name**

\_\_\_\_\_  
**Applicant's or Employee's Tel No.**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Office or Division**

**Date of Request:** \_\_\_\_\_ (*verbally or in writing*)

**ACCOMMODATION REQUESTED (Be as specific as possible, e.g. adaptive equipment, reader, interpreter, etc.):** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**REASON FOR REQUEST:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**If accommodation is time sensitive, please explain:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Please return this form to the supervisor or other point of contact.**

**Log No.:** \_\_\_\_\_

**Adopted:** 11/05/09 \_\_\_\_\_

(Attachment B)

**APPROVAL OF REQUEST  
FOR REASONABLE ACCOMMODATION**

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**Applicant's or Employee's Name**

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**Applicant's or Employee's Tel No.**

---

**Date**

---

**Office or Division**

**Date of Request:** \_\_\_\_\_

**Name(s) of Deciding Official(s):** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Accommodation Requested:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Actions to be Taken to Accommodate Request:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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**Signature of Deciding Official**

**Log No.:** \_\_\_\_\_

**Adopted:** 11/05/09

(Attachment C)

## DENIAL OF REQUEST FOR REASONABLE ACCOMMODATION

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**1. Name of individual requesting reasonable accommodation:**

\_\_\_\_\_

**2. Reasonable accommodation requested:** \_\_\_\_\_

\_\_\_\_\_

**3. Request for reasonable accommodation denied because (may check more than one box):**

\_\_\_\_\_ Accommodation Ineffective

\_\_\_\_\_ Accommodation Would Cause Undue Hardship

\_\_\_\_\_ Medical Documentation Inadequate

\_\_\_\_\_ Accommodation Would Require Removal of Essential Function

\_\_\_\_\_ Accommodation Would Require Lowering of Performance Production Standard

\_\_\_\_\_ Other (Explain): \_\_\_\_\_

\_\_\_\_\_

**4. Date reasonable accommodation denied:** \_\_\_\_\_

**5. Detailed reason(s) for the denial of reasonable accommodation (must be specific, *i.e.* why accommodation is ineffective or causes undue hardship):** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**6. If the individual proposed one type of reasonable accommodation which is being denied, but rejected an offer of a different type of reasonable accommodation, explain both the reasons for the denial of the requested accommodation and why the chosen accommodation would be effective:** \_\_\_\_\_

\_\_\_\_\_

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7. Name(s) of Deciding Official(s):

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**8. If an individual wishes to request reconsideration of this decision, the individual may take the following steps:**

- A. Individuals with disabilities may request prompt reconsideration of a denial of reasonable accommodation. The request for reconsideration should be made to the supervisor or Accommodation Coordinator within **ten 10 business days of actual receipt of the written denial**. The individual may present additional information in support of the request.
- B. The officials who denied the request for reasonable accommodation must review the request for reconsideration and respond to individual making the reconsideration request within **twenty (20) business days of actual receipt of the request for reconsideration**. If the original decision denying the request for reasonable accommodation is reversed, the timelines and procedures for providing the reasonable accommodation prescribed in Section 3, B apply.
- C. Upon receipt of a request for reconsideration, the officials who denied the request for reasonable accommodation and the Accommodation Coordinator must be notified of the request for reconsideration in order to respond to the request within the prescribed timeline.
- D. Pursuing the reconsideration procedures identified above or participating in informal dispute resolution, does not affect the time limits for initiating statutory (e.g. EEO) claims. An individual's participation in informal dispute resolution does not satisfy the requirements for bringing a claim under EEO, MSPB, or negotiated grievance procedures.

**9. If an individual wishes to request reconsideration of this decision, the individual may participate in alternative dispute resolution:**

- A. Individuals with disabilities (applicants or employees) may request informal dispute resolution of a denial of reasonable accommodation, in addition to requesting a reconsideration of a denial as outlined in Section 4 of these procedures. A request for informal dispute resolution does not diminish an individual's right to pursue his or her claim through the EEO process by filing a formal complaint and does not affect the time limits for initiating an EEO complaint. Participation in the informal dispute resolution process by an individual is strictly voluntary.
- B. Informal dispute resolution is intended to address disputes within a reasonable time frame and informally through the use of mediators to facilitate resolution. The ultimate goal of the mediation process is resolution of the issue.

- C. Request for Informal Dispute Resolution. An individual should request informal dispute resolution of a denial of reasonable accommodation within **10 (ten) business days of** actual written receipt of the denial. The request for informal dispute resolution should be made to the supervisor or Accommodation Coordinator. The individual may present additional information in support of this request.
- D. Appointment of a Mediator. If an individual requests informal dispute resolution, the NIGC shall appoint a mediator within **10 (ten) business days of** receipt of the request, absent extenuating circumstances.
- (1) The mediator must be an impartial and neutral third party, who has no decision making authority at the NIGC.
  - (2) The individual and the NIGC deciding officials who denied the individual's request for accommodation must both agree with the selection of the mediator.
  - (3) If costs are required for the appointment of a mediator or for the mediation process, these costs will be paid by the NIGC.
  - (4) Mediators may be appointed from other federal government agencies, the Interagency Sharing Neutrals Program or from outside of the federal government.
- E. Mediation. The purpose of mediation is to encourage resolution of the dispute. The mediator facilitates open discussion between the parties of the dispute and assists with negotiating a mutually agreeable solution. The mediator has no authority to impose a decision or resolution on the parties.
- (1) Once a mediator is appointed, the Accommodation Coordinator shall provide the mediator with information regarding the dispute, including the identity of the individual; the identities of the NIGC deciding officials; the general nature of the dispute; copies of the relevant Confirmation of Request for Reasonable Accommodation and Denial of Request for Reasonable Accommodation; and other information as requested by the mediator.
  - (2) The Accommodation Coordinator shall contact the NIGC deciding officials and the individual to schedule mutually acceptable date(s) for the mediation with all parties.
  - (3) The Accommodation Coordinator shall reserve a neutral location for the mediation.
  - (4) NIGC deciding officials and appropriate supervisors are required actively to participate in the mediation process if the process is selected by the individual.
  - (5) If mediation is successful, a binding settlement agreement between the parties will be signed resolving the dispute. The NIGC Chairman or Commissioner may sign the settlement agreement.
  - (6) If mediation is unsuccessful, the mediator will report the outcome to the Accommodation Coordinator and the informal dispute resolution process will be closed.
  - (7) All information disclosed during mediation (informal dispute resolution) is confidential.
  - (8) An individual is entitled to be represented by legal counsel during the mediation process.

**10. If, after denial of the request for reasonable accommodation, the individual (applicant or employee) wishes to file an EEO complaint, or pursue Merit Systems Protection Board ("MSPB") or union grievance procedures, the individual must take the following steps:**

- A. For an EEO complaint pursuant to 29 C.F.R. § 1614, contact the NIGC EEO Counselor within 45 days from the date of the challenged action (e.g. contact the EEO Counselor 45 days from the date of the notice of denial of reasonable accommodation); or

- B. For a collective bargaining claim, file a written grievance in accordance with the provisions of the Collective Bargaining Agreement; or
- C. Initiate an appeal to the MSPB within 30 days of an appealable adverse action as defined in 5 C.F.R. § 1201.3.

\_\_\_\_\_  
**Signature of Deciding Official**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Signature of Deciding Official**

\_\_\_\_\_  
**Date**

**Log. No.** \_\_\_\_\_

**Adopted:** 11/05/09

**Reasonable Accommodation Information Tracking and Reporting Form**

**1. Name of Individual Requesting Accommodation:**

\_\_\_\_\_

**2. Date Reasonable Accommodation Requested:** \_\_\_\_\_

**3. Reasonable Accommodation needed for:**

\_\_\_\_\_ Application Process

\_\_\_\_\_ Performing Job Functions or Accessing Work Environment

\_\_\_\_\_ Accessing a Benefit or Privilege of Employment (*e.g.* attending training or social event)

**4. Official(s) Receiving Request for Reasonable Accommodation:**

\_\_\_\_\_

\_\_\_\_\_

**5. Date Request Referred to Supervisor and Accommodation Coordinator:**

\_\_\_\_\_

**6. Date Confirmation of Request for Reasonable Accommodation Received:**

\_\_\_\_\_

**7. Names of Supervisor and Other Deciding Official(s) (if any) Deciding the Request:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**8. Reasonable Accommodation:**     (\_\_\_\_\_) Approved                      (\_\_\_\_\_) Denied

**9. Date Reasonable Accommodation was Approved or Denied:** \_\_\_\_\_

**10. Date Reasonable Accommodation was Provided:** \_\_\_\_\_

**11. If timelines prescribed by Procedures for Providing Reasonable Accommodation for Individuals with Disabilities were not met, please explain why (*i.e.* explain the extenuating circumstances for not meeting the timelines):** \_\_\_\_\_



\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

12. Job held (employee) or desired (applicant) by individual requesting reasonable accommodation (title, occupational series, grade level and office): \_\_\_\_\_

\_\_\_\_\_

13. Type(s) of Reasonable Accommodation Requested: \_\_\_\_\_

\_\_\_\_\_

14. Type(s) of Reasonable Accommodation Provided (*if different from what was requested, please explain*): \_\_\_\_\_

\_\_\_\_\_

15. Medical Information Requested? \_\_\_\_\_ If yes, why? \_\_\_\_\_

\_\_\_\_\_

Adopted: 11/05/09

### **Selected Reasonable Accommodation Resources**

- **U.S. Equal Employment Opportunity Commission**

1-800-669-3362 (Voice) 1-800-800-3302 (TT)

<http://www.eeoc.gov/>

The EEOC's Publication Center has many free documents on the Title I employment provisions of the ADA, including both the statute, 42 U.S.C. § 12101 et seq., and the regulations, 29 C.F.R. § 1630. In addition, the EEOC has published a great deal of basic information about reasonable accommodation and undue hardship. The three main sources of interpretive information are: (1) the Interpretive Guidance accompanying the Title I regulations (also known as the "Appendix" to the regulations), 29 C.F.R. pt. 1630 app. §§ 1630.2(o), (p), 1630.9; (2) *Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act*, 8 FEP Manual 405:7601 (1999); and (3) *A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act*, 8 FEP Manual (BNA) 405:6981, 6998-7018 (1992) (*Technical Assistance Manual*). The *Technical Assistance Manual* includes a 200-page Resource Directory, including federal and state agencies, and disability organizations that can provide assistance in identifying and locating reasonable accommodations.

The EEOC also has discussed issues involving reasonable accommodation in the following guidances and documents: (1) *Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations* at 5, 6-8, 20, 21-22, 8 FEP Manual (BNA) 405:7191, 7192-94, 7201 (1995); (2) *Enforcement Guidance: Workers' Compensation and the ADA* at 15-20, 8 FEP Manual (BNA) 405:7391, 7398-7401 (1996); (3) *Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities* at 19-28, 8 FEP Manual (BNA) 405:7461, 7470-76 (1997); (4) *Fact Sheet on the Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964* at 6-9, 8 FEP Manual (BNA) 405:7371, 7374-76 (1996); and (5) *Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act* at 20, 22, 23, 24-5, 8 FEP Manual (BNA) 405:7701, 7711, 7712-14, 7715-16 (2000).

Finally, the EEOC has a poster that employers and labor unions may use to fulfill the ADA's posting requirement.

All of the above-listed documents, with the exception of the *Technical Assistance Manual* and the poster, are also available through the Internet at [www.eeoc.gov](http://www.eeoc.gov). All of these documents provide guidance that applies to federal agencies through the Rehabilitation Act of 1973, 29 U.S.C. § 791.

- **Job Accommodation Network (JAN)**

1-800-232-9675 (Voice/TT)

<http://janweb.icdi.wvu.edu/>

A service of the President's Committee on Employment of People with Disabilities. JAN can provide information, free-of-charge, about many types of reasonable accommodations.

- **ADA Disability and Business Technical Assistance Centers (DBTACs)**

1-800-949-4232 (Voice/TT)

The DBTACs consist of 10 federally funded regional centers that provide information, training, and technical assistance on the ADA. Each center works with local business, disability, governmental, rehabilitation, and other professional networks to provide current ADA information and assistance, and places special emphasis on meeting the needs of small businesses. The DBTACs can make referrals to local sources of expertise in reasonable accommodations.

- **Registry of Interpreters for the Deaf**

(301) 608-0050 (Voice/TT)

<http://www.rid.org/>

The Registry offers information on locating and using interpreters and transliteration services.

- **RESNA Technical Assistance Project**

(703) 524-6686 (Voice) (703) 524-6639 (TT)

<http://www.resna.org/>

RESNA, the Rehabilitation Engineering and Assistive Technology Society of North America, can refer individuals to projects in all 50 states and the six territories offering technical assistance on technology-related services for individuals with disabilities. Services may include:

- information and referral centers to help determine what devices may assist a person with a disability (including access to large data bases containing information on thousands of commercially available assistive technology products);
- centers where individuals can try out devices and equipment;
- assistance in obtaining funding for and repairing devices; and
- equipment exchange and recycling programs.

Adopted: 11/05/09